



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

12-15-06

04:59 PM

In the Matter of the Application of
California American Water Company
(U 210 W) for a Certificate of Public
Convenience and Necessity to
Construct and Operate its Coastal Water
Project to Resolve the Long-Term
Water Supply Deficit in its Monterey
District and to Recover All Present and
Future Costs in Connection There with
in Rates.

A.04-09-019
(Filed September 20, 2004)

**NOTICE OF *EX PARTE* COMMUNICATION
OF THE DIVISION OF RATEPAYER ADVOCATES AND
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

In accordance with Article 8 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") file this notice of *ex parte* communications.

On December 13, 2006, at 3:00 p.m. DRA representatives Cynthia Water, Deputy Director, Danilo Sanchez, Program Manager, Diana Brooks, Supervisor, and Monica McCrary, Counsel for DRA met with Laura Krannawitter, Advisor to Commissioner Bohn at the Commission's headquarters in San Francisco. DRA initiated the communication and distributed a written summary of the meeting topics and a copy of DRA's Comments on the Proposed Decision. A copy of these documents are attached to this Notice. The meeting lasted approximately 35 minutes.

DRA stated that the Proposed Decision erred in beginning Surcharge 2 when the Commission issues a CPCN for the Coastal Water Project or alternative project rather than when the project is fully permitted and construction has begun. DRA stated that even if the Commission grants Cal Am a CPCN for the Coastal Water Project, the project may never be built. DRA explained that a Monterey County Ordinance requires that desalination plants in Monterey County to be publicly owned and operated and the California Coastal Commission staff has considered this ordinance in its recent report on Cal Am's pilot project application. DRA also stated that a regional project which would not be owned and operated by Cal Am is still a possibility and that funding of the project should not begin until the specific design and characteristics of the actual project that will be built has been determined. DRA stated that its recommendation to begin Surcharge 2 when the project is fully permitted is a significant departure from traditional ratemaking.

DRA discussed its concerns regarding the Proposed Decision's failure to establish safeguards to protect customer contributed capital or to ensure that Cal Am does not profit off of ratepayer contributions. DRA stated customer contribution should earn interest at Cal Am's rate of return and pointed out that the Proposed Decision fails to require Cal Am to pay any interest on these funds. DRA also stated that plant funded with customer contribution should be subject to the same rules the Commission adopted for government financed grants and loans.

DRA noted that the Proposed Decision authorized Cal Am to recover \$35 per person for public outreach costs, the full amount requested. Comparable public outreach campaigns by other water agencies have spent far less per person than Cal Am. DRA also discussed its concerns with the content of Cal Am's public outreach efforts.

Finally, DRA explained why the surcharges should be structured as a charge on each unit of water rather than as a percentage of the bill.

Copies of this Notice can be obtained by calling or sending an e-mail to Sue Muniz at (415) 703-1858 (sam@cpuc.ca.gov).

Respectfully submitted,

/s/ MONICA MCCRARY

Monica McCrary
Staff Counsel

Attorney for the Division of
Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Email: mlm@cpuc.ca.gov
Phone: (415) 703-1288
Fax: (415) 703-2262

December 15, 2006

ATTACHMENT

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
California American Water Company
(U 210 W) for a Certificate of Public
Convenience and Necessity to
Construct and Operate its Coastal Water
Project to Resolve the Long-Term
Water Supply Deficit in its Monterey
District and to Recover All Present and
Future Costs in Connection There with
in Rates

A.04-09-019

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION**

MONICA MCCRARY

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission

505 Van Ness Ave.

San Francisco, CA 94102

Email: mlm@cpuc.ca.gov

Phone: (415) 703-1288

Fax: (415) 703-2262

December 4, 2006

TABLE OF CONTENTS

I.	SUMMARY OF ERRORS	1
II.	IT IS LEGAL ERROR TO REQUIRE RATEPAYERS TO CONTRIBUTE TOWARD AN ILLEGAL WATER PROJECT.....	2
III.	THE PROPOSED DECISION COMMITS LEGAL ERROR BY IGNORING APPLICABLE COMMISSION PRECEDENT REGARDING ABANDONED PLANT	4
IV.	THE PROPOSED DECISION ERRS IN NOT SPECIFYING WHAT WILL HAPPEN TO FUNDS COLLECTED BY SURCHARGE 2 IF THE PROJECT IS NOT PERMITTED OR IS ABANDONED	5
V.	THE PROPOSED DECISION’S JUSTIFICATION FOR ALLOWING CAL AM TO RECOVER \$1.36 MILLION IN PUBLIC OUTREACH COSTS IS FLAWED AND NOT SUPPORTED BY THE RECORD	6
VI.	THE PROPOSED DECISION FAILS TO REQUIRE CAL AM TO BOOK FUNDS COLLECTED FROM SURCHARGE 2 TO A MEMORANDUM ACCOUNT OR TO PAY INTEREST ON THESE CUSTOMER ADVANCES.	8
VII.	THE PROPOSED DECISION’S FINDING THAT IT IS PREMATURE TO CREATE SAFEGUARDS TO PROTECT RATEPAYER CONTRIBUTION IS ERROR.....	9
VIII.	THE PROPOSED DECISION DOES NOT CONTAIN SUFFICIENT JUSTIFICATION FOR MAKING THE SURCHARGES A PERCENTAGE OF THE CUSTOMER’S BILL	11
IX.	THE PD FAILS TO ADDRESS ALL OF THE ISSUES.....	12
A.	THE PD VIOLATES PU CODE § 739.5 BY FAILING TO CONSIDER ANY PROPOSAL TO REDUCE THE RATE IMPACT OF THE ADOPTED SURCHARGES ON LOW INCOME CUSTOMERS	12

ATTACHMENT

X.	OTHER FACTUAL ERRORS	13
XI.	IRWUG EXEMPTION FROM SURCHARGES.....	14
XII.	CONCLUSION	15

TABLE OF AUTHORITIES	iii
-----------------------------------	------------

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Public Utilities Code

Section 451	3, 6
Section 739.8.....	12, 13

Commission Decisions

<u>Rulemaking to Preserve the Public Interest Integrity of Government Financed Funding, (2006) ____ CPUC 3d ____, (D.06-03-015)</u>	10
---	----

<u>Re Southern California Edison, (2005) ____ CPUC 3d ____, (D.05-12-040)</u>	10
---	----

<u>Re Financial and Operational Risks of Commission-regulated Water Utilities, (1994) 55 CPUC 2d 158 (D.94-06-033)</u>	9
--	---

<u>Re Pacific Gas and Electric Company, (1983) 14 CPUC, 15, 50 (D.83-112-068).....</u>	9
--	---

<u>Re Pacific Power and Light, (1984) 15 CPUC 2d 118 (D.84-05-097).....</u>	4, 5
---	------

<u>Re Pacific Gas and Electric Company, (1984) 15 CPUC 2d 123 (D.84-05-100).</u>	4, 5
--	------

Commission Resolutions

F-632, Hillview Water Company	10, 11
-------------------------------------	--------

Ordinances

Monterey County Health Code § 10.72	2, 3
---	------

ATTACHMENT

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
California American Water Company
(U 210 W) for a Certificate of Public
Convenience and Necessity to
Construct and Operate its Coastal Water
Project to Resolve the Long-Term
Water Supply Deficit in its Monterey
District and to Recover All Present and
Future Costs in Connection There with
in Rates

A.04-09-019

COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") files its Comments on the Proposed Decision of Administrative Law Judge ("ALJ") Patrick.

As discussed below, the Proposed Decision is replete with legal, technical, and factual errors. In addition, the Proposed Decision reaches numerous conclusions without justification and fails to address issues raised by DRA during the proceeding.

I. SUMMARY OF ERRORS

- It is legal error for the Commission to require ratepayers to contribute to an illegal project.
- It is legal error to ignore Commission precedent regarding who bears the risk of abandoned projects.

ATTACHMENT

- The Proposed Decision’s justification for allowing Cal Am to recover the full \$1.36 million in public outreach costs is flawed and not supported by the record.
- The Proposed Decision’s finding that it is premature to implement safeguards to protect ratepayer contribution is error.
- The Proposed Decision fails to require Cal Am to book the funds collected from Surcharge 2 to a memorandum account or to pay interest on these customer advances.
- The Proposed Decision does not provide adequate justification for structuring the surcharges as a percentage of the customer’s bill.
- The Proposed Decision violates Public Utilities Code (“P.U. Code”) § 739.5 because it does not consider any proposal to reduce the rate impact of the adopted surcharges on low income customers.

II. IT IS LEGAL ERROR TO REQUIRE RATEPAYERS TO CONTRIBUTE TOWARD AN ILLEGAL WATER PROJECT

The Proposed Decision errs by requiring ratepayers to begin funding a project that is illegal. Monterey County Health Code § 10.72, prohibits Cal Am or any private company from owning a seawater desalination plant. Section 10.72 requires any person or entity interested in constructing or operating a desalination plant to obtain a permit from the Director of Environmental Health of the County of Monterey. Section 10.72.030 requires all applicants for such a permit to provide assurance that the desalination facility will be owned and operated by a public entity.

The Monterey County Board of Supervisors adopted this ordinance seventeen years ago to protect the health, safety and welfare of Monterey County residents. (Pajaro/Sunny Mesa Community Services District Reply Brief, p. 4.) Cal Am has not challenged the ordinance in court and the County is currently not considering any changes in this ordinance to allow private entities, like Cal Am, to

ATTACHMENT

own and operate desalination plants in the Monterey County. (Cal Am/Townsley, 3 RT 188; Cal Am Feizollahi, 2 RT 101-102.)

The record indicates that this code will be enforced. The Monterey County Department of Health considered the ordinance in its review of Cal Am's pilot project but found that the ordinance did not apply to the pilot project because the water produced from the pilot would not be used for domestic purposes. (Exhibit 4, Ex. 2). The County made no finding regarding whether the ordinance will apply to the final project. The Coastal Commission also considered the ordinance in its review of the pilot project, and it is logical that the Coastal Commission will consider this ordinance in its review of the final Coastal Water Project. (*Id.* at Ex. 13.)

The Proposed Decision recognizes that the ordinance creates a problem for the project as it states "[w]e agree that section 10.72 must be addressed sooner or later." (PD, p. 28.) However, based upon no apparent reasoning, the Proposed Decision erroneously concludes, that the code does not create the level of uncertainty sufficient to justify delaying the implementation of the proposed surcharges.

Even if the Commission grants Cal Am a Certificate of Public Convenience and Necessity ("CPCN") for the project, Monterey County Health Code § 10.72 prohibits Cal Am from either owning or operating the plant. Until this statute is changed or challenged and overturned this restriction remains. The Proposed Decision commits legal error by requiring ratepayers to contribute to this illegal project.¹ DRA's recommendation to begin Surcharge 2 after the project is fully permitted and construction has begun assures that ratepayers will not fund an illegal project.

¹ P.U. Code § 451 requires that all charges by a public utility be just and reasonable and that unreasonable charges are unlawful. Requiring ratepayers to fund an illegal project is unreasonable and unlawful.

III. THE PROPOSED DECISION COMMITS LEGAL ERROR BY IGNORING APPLICABLE COMMISSION PRECEDENT REGARDING ABANDONED PLANT

In allowing Cal Am to begin to immediately recover preconstruction costs associated with the Coastal Water Project, the Proposed Decision states:

When the Commission approves any preconstruction cost item in this proceeding, it is implicit that the cost was reasonably and properly incurred in the pursuit of a long-term water supply solution. Therefore, even if the project is abandoned, CalAm should be allowed to recover such costs. (PD, p. 21.)

In making this finding, the Proposed Decision completely ignores long-standing Commission policy on who bears the risk of abandoned plant and dismisses past precedent without discussion. With regard to preconstruction costs, the Proposed Decision comes to the erroneous conclusion that once costs are determined to be reasonable, ratepayers are responsible even if the project is later abandoned. The Proposed Decision's conclusion is legal error.

Even if the costs are reasonable, ratepayers are not necessarily responsible for them if the project is later abandoned. The Commission's general policy is that shareholders bear the risk of abandoned projects. (*Re Pacific Power and Light*, (1984) 15 CPUC 2d 118, 119 (D.84-05-097).) The Commission has outlined specific circumstances where costs from abandoned projects may be apportioned between the utility shareholders and ratepayers. The Commission will only apportion some of such reasonable costs to ratepayers if the project occurred during times of unanticipated change and management acted reasonably in its pursuit and re-evaluation of the project.² (*Id.* at p. 119; *Re Pacific Gas and*

² To determine if the project was reasonable the Commission looks to see if the utility exercised reasonable managerial skill with respect to the project. The Commission has identified three factors to consider when assessing whether the utility acted reasonably. These are: 1) whether the utility identified the relevant risks, 2) whether the utility considered the risk in the analysis of the particular project, and 3) whether the utility re-evaluated the risk throughout the project. (*Re Pacific Gas and Electric Company* (1984) 15 CPUC 2d 123, 125-126.)

ATTACHMENT

Electric Company (1984) 15 CPUC 2d 123, 125-126 (D.84-05-100)) No such determination has been made, or can be made, as part of this phase of the proceeding. This type of an evaluation is only done if the project is abandoned.

It is legal error to ignore or depart from Commission precedent without evidence supporting the change. Such action is arbitrary and capricious as it changes Commission policy without establish a record for such change. Under D.84-05-097 and D.84-05-100, reasonable costs of abandoned projects are only shared with ratepayers if certain conditions are met and the evaluation is not done until the project is abandoned. The Commission should not permit Cal Am to begin to recover preconstruction costs until there is more certainty that this project will not be abandoned.

IV. THE PROPOSED DECISION ERRS IN NOT SPECIFYING WHAT WILL HAPPEN TO FUNDS COLLECTED BY SURCHARGE 2 IF THE PROJECT IS NOT PERMITTED OR IS ABANDONED

Although allowing Cal Am to begin collecting Surcharge 2 before the project is permitted by all agencies, the Proposed Decision fails to address what will happen to these funds if the project is never permitted or is later abandoned. DRA had not made recommendations on this issue because it is DRA's position that Surcharge 2 should not begin until construction begins.

The Commission cannot require ratepayers to fund a project that has no certainty of completion and ignore the issue of what will happen to the funds if the project never moves forward. In the prehearing conference scoping this phase of the case, ALJ Cooke stated that she contemplated that any such funds be returned to ratepayers if the project is not completed.

[P]erhaps I didn't distinguish that sufficiently in the Ruling, but obviously, if recovery was begun for a water supply solution, and it was later determined that no solution was necessary, there would be a pot of money that would have been collected that would then be available to be redisbursed.

ATTACHMENT

. . . essentially the money would be set aside for a dedicated purpose, and, should that purpose not come to be, then it would be returned to ratepayers. (Oct. 5, 2005 PHC pp. 2-3.)

Although the issue was contemplated in the scoping of the proceeding, the Proposed Decision fails to even address the issue. Assuming, arguendo, that the project is legal, charging ratepayers for a project that may never be completed without adopting a method for refunding those charges if the project never happens, is unjust and unreasonable and violates of P.U. Code Section 451.

The Commission must address what will happen to these funds should the Coastal Water Project or alternative project never be completed by Cal Am. It is unlawful to collect this money in advance from ratepayers and not have a plan for its return if the project fails. The Commission can avoid this problem by delaying the implementation of Surcharge 2 until Cal Am has obtain the more than 40 permits and approvals required for the Coastal Water Project and construction has begun.

V. THE PROPOSED DECISION'S JUSTIFICATION FOR ALLOWING CALAM TO RECOVER \$1.36 MILLION IN PUBLIC OUTREACH COSTS IS FLAWED AND NOT SUPPORTED BY THE RECORD

The ALJ's sole reasoning for allowing Cal Am to recover \$1.36 million in public outreach costs is contained in a three sentences on page 20 of the Proposed Decision. The Proposed Decision states:

Two previous attempts to solve the Monterey District water supply problem have failed. In order for the project to have a chance at success it was absolutely essential that CalAm conduct extensive and early outreach. CalAm had to decide what was necessary to get the job done. (PD, p. 20.)

In reaching this conclusion, the Proposed Decision ignores the immense evidence demonstrating that Cal Am's expenditures were unreasonable and

ATTACHMENT

excessive. (See DRA Opening Brief, pp. 18-31.) In authorizing Cal Am to recover \$1.36 million in public outreach costs based upon the conclusion that “CalAm had to decide what was necessary to get the job done” the Proposed Decision is essentially stating it will approve whatever Cal Am spent without considering the reasonableness of the costs. This is legal error.

The evidence demonstrates that Cal Am’s costs were not reasonable and were not prudently incurred. DRA presented evidence of the cost of similar outreach projects conducted by other entities to demonstrate that Cal Am’s public outreach costs of \$35 per person was unreasonable.³ DRA showed that these projects were appropriate to consider in determining the reasonableness of Cal Am’s outreach program because some of the projects had to overcome an equal if not greater negative public perception of the project. (DRA Opening Brief, pp. 21-22.) For example, the Orange County water-recycling project faced an even greater hurdle than Cal Am because it had to convince customers that drinking recycled sewer water was safe and thus should have had to spend more per customer on outreach. Even Cal Am stated that it looked at other such projects when developing its outreach program. (Cal Am/Tilden 4 RT 344; Exhibit 10, p. 5.)

Without any support for its conclusion, the Proposed Decision states that public outreach costs of other projects cannot serve as a yardstick for determining the reasonableness of Cal Am’s outreach because each outreach program is different. It is factual error to find that these other outreach project do not provided a valid comparison for the purpose of determining the reasonableness of Cal Am’s public out reach expenditures. Moreover, it is legal error to make such a conclusion without any supporting evidence.

³ There is also evidence that Cal Am’s public outreach costs included lobbying costs and costs associated with the San Clemente Dam Project, neither of which should be recoverable from ratepayers. (See DRA Reply Brief, p. 11)

ATTACHMENT

Although the Proposed Decision approves Cal Am's public outreach expenditures under the reasoning that Cal Am needed to spend what was necessary to "get the job done," Cal Am did not get the job done and thus costs cannot be considered reasonable on that basis. Cal Am was not successful in developing a regional project. Although Cal Am has spent large sums of money allegedly in pursuit of a regional project, it has not proposed such a facility although Monterey County agencies still support a regional solution. (Exhibit 4, Ex.18.)

Cal Am was also not successful at obtaining public support for the project. The record shows that almost 60 percent of ratepayers oppose the Coastal Water Project if it means a doubling of their rates.⁴ (Exhibit 37, p. 19.) Cal Am has not been successful at getting its pilot project permitted, a project that was over a year late at the time DRA issued its testimony in June of 2006. (Exhibit 18, p. 18.)

The Proposed Decision fails to conduct any analysis of the costs of Cal Am's public relations expenses despite the abundance of evidence demonstrating Cal Am's over spending. The Proposed Decision also fails to address the extensive evidence of Cal Am's deficient business practices associated with its public outreach spending which further demonstrate the unreasonableness of Cal Am's outreach spending. (See DRA Opening Brief, pp. 18-27.) It factual error to find Cal Am's public outreach costs reasonable and it is legal error to do so without evaluating those costs.

VI. THE PROPOSED DECISION FAILS TO REQUIRE CAL AM TO BOOK FUNDS COLLECTED FROM SURCHARGE 2 TO A MEMORANDUM ACCOUNT OR TO PAY INTEREST ON THESE CUSTOMER ADVANCES.

The Proposed Decision allows Cal Am to begin collecting Surcharge 2 as a contribution toward the cost of the Coastal Water Project, or alternative project,

⁴ While this survey was conducted in late 2004, Cal Am witness Tilden testified additional surveys were unnecessary as little had changed the survey was conducted. (Cal Am/Tilden 4 RT 436.)

ATTACHMENT

before Cal Am spends any money on construction. Because the Proposed Decision allows Cal Am to begin surcharge 2 after the Commission grants a CPCN, rather than once the project is fully permitted, Cal Am will be potentially collecting tens of millions of dollars before spending anything on construction.⁵ Yet the Proposed Decision fails to require Cal Am to book these costs to a memorandum account or require that these precollected funds earn interest. This is technical and factual error.

The Commission must require Cal Am to book funds collected from Surcharge 2 to a memorandum account to protect these funds and to assure that the funds are available to pay for a water supply project. DRA recommends that this memorandum account be called “SWRCB Order 95-10 Water Supply Customer Contribution Memorandum Account.” (Exhibit 18, p. 30.)

Given that ratepayers are essentially prepaying for plant, the Commission should require Cal Am to pay interest on ratepayer contributions at Cal Am’s authorized rate of return. (Exhibit 18, p. 30.) However, at a minimum, any funds collected by Surcharge 2 and booked to the memorandum account must earn interest at the 90-day commercial paper rate. (*Re Financial and Operational Risks of Commission-regulated Water Utilities*, (D.94-06-033) 55 CPUC 2d 158, 194-195.)

VII. THE PROPOSED DECISION’S FINDING THAT IT IS PREMATURE TO CREATE SAFEGUARDS TO PROTECT RATEPAYER CONTRIBUTION IS ERROR

Under traditional ratemaking, “ratepayers are required to bear only the reasonable costs of those projects which provide direct and ongoing benefits, or are used and useful in providing adequate and reasonable service to ratepayers. (*Re Pacific Gas and Electric Company*, (1983) 14 CPUC, 15, 50 (D.83-112-068.)

⁵ Cal Am estimates that it will collect \$7.3 million from Surcharge 2 during the first year, \$14.8 million in the second year, and \$23 million in the third year. (Exhibit 18, p. 27.)

ATTACHMENT

The Commission has found that a utility must “demonstrate come extraordinary need” for the Commission to even consider departing from the used and useful principle. (*Re Southern California Edison*, D.05-12-040, p. 54.)

The Proposed Decision’s sole reasoning for departing from the used and useful principle is to protect ratepayers from rate shock, stating that if Coastal Water Project costs are implemented in rates at one time, rates will nearly double. No other extraordinary need was cited in the PD. However, unless the Commission adopts safeguards to protect ratepayers, the Commission will not be protecting ratepayers but will be exposing them to significant risks that ratepayers are not exposed to under traditional ratemaking.

DRA’s testimony provided a list of safeguards that the Commission should adopt if it departs from traditional ratemaking principles and permits Cal Am to collect funds from ratepayers before the Coastal Water Project, or alternative, is used and useful. (Exhibit 18, pp. 30-31.) The Proposed Decision addresses only one of the proposed safeguards and dismisses, as premature, DRA’s recommendation that ratepayer contribution toward the Coastal Water Project be subject to the same rules as government financed grants and loans adopted in Decision 06-03-015. (PD, p. 25.) The Proposed Decision’s dismissal of this recommendation as premature and its failure to consider and adopt any safeguards to protect ratepayer contribution toward plant is error.

DRA’s recommendation to protect customer contribution to the Coastal Water Project by requiring that such contribution be subject to the same rules the Commission adopted for government financed grants and loans assures that Cal Am will not profit off of ratepayer contributions if the plant is sold to a public entity and that ratepayers will not pay for the project twice. Adopting such protections is consistent with past Commission practice.⁶ (Resolution F-632,

⁶ In Resolution F-632, the Commission authorized Hillview Water Company to enter a loan contract with a bank to pay off an existing Safe Drinking Water Act loan. The loan was secured by the customers through a surcharge and was to be used to make various capital improvements.
(continued on next page)

Hillview Water Company.) The Proposed Decision's rejection of DRA's proposal on the basis that it is premature is factual error.

DRA recommended other safeguards to protect ratepayers which the Proposed Decision fails to even address. For example, DRA recommended that Surcharge 2 funds be used solely for offsetting the future capital costs of any long-term water supply project. As discussed previously, DRA recommended that customer contribution be booked to a memorandum account which earns interest at Cal Am's authorized rate of return because customers are in essence prepaying for plant. The Proposed Decision's failure to address these or the other safeguards recommended by DRA in its testimony is error.⁷

VIII. THE PROPOSED DECISION DOES NOT CONTAIN SUFFICIENT JUSTIFICATION FOR MAKING THE SURCHARGES A PERCENTAGE OF THE CUSTOMER'S BILL

The Proposed Decision adopts Cal Am's recommendation to structure the proposed surcharges as a percentage of the customer's bill because it claims the surcharge "is simple to understand and implement." (PD at p. 27.) The Proposed Decision erroneously rejects DRA's proposal to structure the surcharge as a charge on each unit of water because "rate design for Monterey District is a controversial matter which belongs in the GRC proceedings." (PD at p. 27.)

(continued from previous page)

In authorizing the transaction, the Commission stated:

Although Hillview is not presently contemplating a sale of its system to a public entity, such a sale could occur at some future date. So that utility customers are not put in the position of paying twice for the plant financed by the proposed surcharge, Hillview should not receive any compensation for the plant financed by the surcharge in the event of a sale. (*Id.* at p. 8.)

The Commission required Hillview to permanently exclude from ratebase for ratemaking purposes the plant financed by the loan that was paid for by customers through the surcharge. (*Id.* at p. 12.)

⁷ A full list of DRA recommended safeguards are in DRA's Report on the Application of California American Water Service for Coastal Water Project Interim Rate Relief. Exhibit 18, pp. 30-31.

ATTACHMENT

The PD commits legal error by allowing Cal Am interim rate relief but not addressing alternative structures of that rate relief on the grounds that it belongs someplace else. How customers will be charged for the Coastal Water Project is a key issue in this case, and this proceeding is appropriately categorized as a “ratesetting” proceeding.

Similar to Cal Am’s proposal, DRA’s recommended volumetric surcharge is simple and easy to understand – customers are charged the same surcharge amount for each unit of water used. However, unlike Cal Am’s proposal, DRA’s proposal is fair and equitable to consumers because it charges all customers (within each customer class) using the same amount of water, the same surcharge.⁸ Under Cal Am’s proposal, residential customers that use the same amount of water can be charged vastly different surcharge amounts. (Exhibit 18, pp. 32-37.)

The Proposed Decision must consider DRA’s proposal and cannot dismiss it as a rate design issue that should be handled in a GRC.

IX. THE PD FAILS TO ADDRESS ALL OF THE ISSUES

A. The PD violates PU Code § 739.5 by failing to consider any proposal to reduce the rate impact of the adopted surcharges on low income customers

Public Utilities Code § 739.8(b) requires the Commission to consider programs to provide rate relief for low-income customers. Along this line, a September 6, 2005 ALJ Ruling in this proceeding required Cal Am to show the impact of the proposed surcharges on low income customers. In its testimony, DRA presented a rate relief program that would provide low-income customers a 50 percent discount on any adopted surcharge. The Proposed Decision, however, fails to address or even mention how the surcharges will affect low-income customers or to consider any rate relief for low income customers.

⁸ DRA’s proposal is also more equitable to low income customers participating in Cal Am’s PAR program. (See Exhibit 18, pp. 35, 37-39.)

ATTACHMENT

If approved as proposed by Cal Am, the Coastal Water Project, (currently estimated to cost \$191 million), will result in a near doubling of current rates. (PD p. 6.) When both of the surcharges adopted in the Proposed Decision are fully implemented, the surcharges will increase customers' bills by 70 percent. The Proposed Decision, however, does not provide any additional discount to low-income customers or address why there should be no discount on these surcharges.⁹ This is especially surprising given the Commission's stated intent to develop options to increase the affordability of water service for low income customers. (CPUC Water Action Plan, p. 5.)

P.U. Code § 739.8(b) requires the Commission to consider programs to provide rate relief for low-income customers. Parties addressed this issue during the proceeding and DRA presented a proposal to help ease this substantial burden to low income customers. The Proposed Decision errs by completely ignoring the issue and failing to even consider a proposal to ease the burden these surcharges will impose on low-income customers.

X. OTHER FACTUAL ERRORS

- Finding of Fact 11 states that DRA recommends recovery of Public outreach costs of no more than \$1,600. The correct amount is \$160,000.
- The Proposed Decision states that Cal Am provided hundreds of pages of legal invoices that contained detailed billing entries for legal fees. This is factual error.¹⁰ Bills for legal services were redacted and contained little detail. (Exhibit 62, Attachments Allen Matkins, Somach, Steefel) Cal Am witness Mr. Feizollahi testified

⁹ Under Cal Am's current low income program (PAR) qualifying low income customers do not pay the meter charge. However PAR customers pay the full quantity charge.

¹⁰ DRA is confused about this placement of this discussion in the section titled "Reasonableness Review of Public Outreach Costs" as these legal invoices are not part of the costs categorized as public outreach costs.

ATTACHMENT

descriptions were redacted because the work described was attorney/client privilege. (Cal Am/Feizollahi 7 RT 769.) It is factual error to say the legal services bills contained detailed billing entries.

- August 10, 2006 should be added to the list of hearing dates contained on page 5 of the PD.
- DRA recommends deleting the sentence on page 12 stating “The surcharges will impact both existing and future ratepayers which is appropriate given that the Coastal Water Project is a project to replace existing supplies not to add customers.” Whether or not Cal Am’s proposal includes water for growth was not a subject of this phase of the proceeding and in fact will likely be a contested issue in the next phase of this proceeding. It is legal error to include this conclusion when this issue was not litigated in this phase of the proceeding.
- On pages 13, 20, and 21, the Proposed Decision indicates that DRA recommends that the Commission approve recovery of \$1,639,419 of preconstruction costs. The Proposed Decision must be modified to make it clear that DRA’s recommendation is that the Commission allow recovery of this amount only after the Coastal Water Project, or alternative project, is certified by the Commission. As written, the Proposed Decision implies that DRA is recommending immediate recovery which is factual error.

XI. IRWUG EXEMPTION FROM SURCHARGES

DRA has read the Proposed Decision’s discussion of IRWUG’s request for an exemption of from the proposed surcharges. The Proposed Decision states that before it can authorize Cal Am to file a special tariff for irrigation water, more information is needed on the applicability of the surcharges to emergency, or other

ATTACHMENT

use of Cal Am potable water (such as for flushing greens) after the Water Reclamation Expansion Project is in place.

DRA agrees that this information is necessary and will likely comment on this issue once it receives the requested information.

XII. CONCLUSION

DRA recommends that the Commission substantially modify the Proposed Decision as discussed above. Unfortunately the Proposed Decision is replete with factual and legal errors that require correction. As written, the proposed decision contains far too many legal, technical, and factual errors to withstand either internal or appellate scrutiny.

Respectfully submitted,

/s/ MONICA MCCRARY

Monica McCrary
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Email: mlm@cpuc.ca.gov
Phone: (415) 703-1288
Fax: (415) 703-2262

December 4, 2006

APPENDIX A

CHANGES TO FINDINGS OF FACT AND CONCLUSIONS OF LAW¹¹

Findings of Fact

11. DRA recommends: (1) recovery of engineering and environmental costs be deferred until it hires a consultant to assist DRA in its review; (2) recovery of public outreach costs be no more than ~~\$1,600~~ \$160,000; and (3) other costs of \$1,639,429 be approved for recovery after a CPCN is issued.

16. The Monterey County Board of Supervisors adopted Monterey County Health Code Section 10.72 to protect the health, safety and welfare of Monterey County residents.

17. CalAm's rate design, in the Monterey District, charges some customers different rates for the same amount of water use.

18. Recovery of costs associated with the Coastal Water Project, or alternative water supply project, will have a significant financial impact on low-income customers.

19. The Coastal Water Project, or alternative water supply project, could be sold to a public entity

Conclusion of Law

1. CalAm's need to comply with the SWRCB Order 95-10, ~~and the estimated \$191 million costs of a project to comply with that order, and the few number of ratepayers in Cal Am's Monterey District that will be paying for the project,~~ creates special

¹¹ Additions are underlined and text that should be deleted is shown with ~~strikethrough~~.

ATTACHMENT

circumstances warranting limited a departure from standard rate making practice, which allows project costs to be included in rates only after the project is found to be “used and useful.”

2. It is in the public interest to implement CalAm’s proposed Special Request 1 Surcharge ~~effective January 1, 2007~~ once the project has received a CPCN, because at that time the CEQA review will be completed and there will be less uncertainty about the project. ~~it will reduce overall project costs and help reduce rate shock.~~

4. ~~Given that~~ Monterey District customer will experience a significant GRC rate increase in January 2007 ~~in addition to the Special Request 1 Surcharge, implementation of the Special Request 2 Surcharge should be deferred to coincide with issuance of the CPCN for the Coastal Water Project, or alternative supply solution.~~

6. ~~\$1,353,831~~ \$160,000 in costs expended for public outreach through 2005 are found to be reasonable, and Cal Am should be authorized to recover this amount book in the memorandum account through Surcharge 1 once a CPCN is issued for the project. The remaining \$1,193,831 in public outreach costs are to be unreasonable.

17. CalAm should be authorized to file tariff sheets to implement the Special Request 1 Surcharge effective at the time a CPCN is issued for the Coastal Water Project, or alternative supply solution. ~~January 1, 2007.~~

18. CalAm should be authorized to file tariff sheets to implement the Special Request 2 Surcharge after a CPCN is issued for the Coastal Water Project, or alternative supply solution, and construction on the project has begun.

19. Monterey County Health Code Section 10.72 prohibits Cal Am from owning or operating a seawater desalination plant.

ATTACHMENT

20. P.U. Code Section 451 requires that all charges by a public utility be just and reasonable and that unreasonable charges are unlawful. Requiring ratepayers to fund an illegal project is unreasonable and unlawful.

21. Funds collected by Surcharge 2 shall be booked to a Memorandum Account called “SWRCB Order 95-10 Water Supply Customer Contribution Memorandum Account” and will earn interest at CalAm’s authorized rate of return for the Monterey District.

22. A surcharge structured as a charge on each unit of water is simple and easy to understand and is fair and equitable to ratepayers because it charges customers using the same amount of water, the same surcharge.

23. Public Utilities Code Section 739.8(b) requires the Commission to consider programs to provide rate relief for low-income customers.

24. Providing low-income customers participating in CalAm’s PAR program with a 50 percent discount on adopted surcharges will provide these customers with necessary rate relief and will not unduly burden other ratepayers.

25. All contributed plant should be permanently excluded from rate base to protect ratepayers from paying for the project twice.

26. The rules and procedures the Commission adopted in D.06-03-015 to protect government financed fund, such as grants and loans, are necessary to protect customer contributions collected under Surcharge 2.

27. Funds collected by Surcharge 2 should only be used to offset the future capital costs of a long-term water supply solution or refunded to ratepayers.

ATTACHMENT

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **COMMENTS OF DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION** in **A.04-09-019** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on [date] at San Francisco, California.

/s/ Joanne Lark
Joanne Lark

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

ATTACHMENT

SERVICE LIST A.04-09-019

TwoKillerBs@aol.com
connere@west.net
afhubb@aol.com
dave@laredolaw.net
mjdelpiero@aol.com
mdjoseph@adamsbroadwell.com
mlm@cpuc.ca.gov
LDolqueist@steefel.com
edwardoneill@dwt.com
dcarroll@downeybrand.com
jgeever@surfrider.org
townsley@amwater.com
ffarina@cox.net
llowrey@nheh.com
shardgrave@rbf.com
sflavin@redshift.com
sleonard@amwater.com
andy@mpwmd.dst.ca.us
hjallen101@yahoo.com
wyrddjon@yahoo.com
tgulesserian@adamsbroadwell.com
EZigas@esassoc.com
lweiss@steefel.com
sleeper@steefel.com
chrishilen@dwt.com
jessnagtalon@gmail.com
jody_london_consulting@earthlink.net
hcooley@pacinst.org
abl@bkslawfirm.com
dstephen@amwater.com
bdp@cpuc.ca.gov
dsb@cpuc.ca.gov
flc@cpuc.ca.gov
jzr@cpuc.ca.gov
mlc@cpuc.ca.gov

**Division of Ratepayer Advocates Ex Parte on Coastal Water Project
Interim Rate Relief Proposed Decision
A.04-09-019**

- 1) Surcharge # 2 should not begin until all permits are obtained and construction on the Coastal Water Project has begun. Surcharge #2 would pre-collect funds to offset future construction costs and would be treated as customer contribution.
- 2) Safeguards are needed to insure the public interest integrity of customer-contributed capital provided by Surcharge #2. Cal Am should not profit on ratepayer contributions if the plant is sold to a public entity.
- 3) The PD authorizes 100% of the excessive public outreach costs incurred by Cal Am for Coastal Water Project totaling \$1.36 million for 38,000 customers over 2.3 years. This amounts to \$35/customer to date, or approximately \$15/per customer per year. Comparable public outreach campaigns by other water agencies are as follows:
 - Orange County Water District: wastewater reuse system public outreach spent \$3,000,000 over six years for 767,000 customers. **Total: \$0.65 per customer per year.**
 - Marin Municipal Water District: pilot desalination plant public outreach spent \$200,000 over 9 months for 59,694 customers. **Total: \$4.47 per customer per year.**
 - San Diego County Water Agency: desalination public outreach spent \$435,855 over 3 ½ years for 1 million customers. **Total: \$0.19 per customer per year.**
 - The surcharges should be structured as a volumetric charge on each unit of water. This is equitable because it charges all customers using the same amount of water the same surcharge amount. Under Cal Am's proposal, some customers using the same amount of water would be charged different surcharge amounts.
- 4) The PD fails to address how the surcharge will affect low income customers or to consider rate relief for these customers. DRA recommends the Commission allow qualifying low income customers 50% off any approved surcharges.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**NOTICE OF *EX PARTE* COMMUNICATION OF THE DIVISION OF RATEPAYER ADVOCATES AND MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**” in **A.04-09-019** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on December 15, 2006 at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

Service List

A.04-09-019

EZigas@esassoc.com;
LDolqueist@steefel.com;
TwoKillerBs@aol.com;
abl@bkslawfirm.com;
afhubb@aol.com;
andy@mpwmd.dst.ca.us;
bdp@cpuc.ca.gov;
chrishilen@dwt.com;
connere@west.net;
dave@laredolaw.net;
dcarroll@downeybrand.com;
dsb@cpuc.ca.gov;
dstephen@amwater.com;
edwardoneill@dwt.com;
ffarina@cox.net;
flc@cpuc.ca.gov;
hcooley@pacinst.org;
hjallen101@yahoo.com;
jessnagtalon@gmail.com;
jgeever@surfrider.org;
jody_london_consulting@earthlink.net;
jzr@cpuc.ca.gov;
llowrey@nheh.com;
lweiss@steefel.com;
mdjoseph@adamsbroadwell.com;
mjdelpiero@aol.com;
mlc@cpuc.ca.gov;
mlm@cpuc.ca.gov;
sflavin@redshift.com;
shardgrave@rbf.com;
sleeper@steefel.com;
sleonard@amwater.com;
tgulesserian@adamsbroadwell.com;
townsley@amwater.com;
wyrddjon@yahoo.com;